IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 107

ELIZABETH DONNER HANSON, Individually, As Executrix of the Will of Dora Browning Donner, Deceased, and As Guardian ad Litem for JOSEPH DONNER WINSOR and DONNER HANSON, and WILLIAM DONNER ROOSEVELT, Individually, *Appellants,*

vs.

KATHERINE N. R. DENCKLA, Individually, and ELWYN L. MIDDLETON, As Guardian of the Property of DOROTHY BROWNING STEWART, Also Known As DOROTHY B. STEWART and DOROTHY B. RODGERS STEWART, an Incompetent Person, *Appellees.*

BRIEF OF APPELLEES

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Questions Presented for Review

The real questions herein are as follows:

1. Does this Court have jurisdiction of this appeal?

2. Did the Florida Courts have jurisdiction below of the subject matter and of the necessary parties?

3. Was the decree of the Florida Supreme Court correct and is it entitled to full faith and credit?

Statement of the Case

We deem it essential that the appellants' statement of the case as contained in their brief be corrected and supplemented.

This action was *not* brought to determine the validity of the exercise of a power of appointment reserved in an *inter vivos* instrument purporting to create a trust. (The so-called trust is in effect no more than an agency agreement).

The action was brought to determine what personal property passed under the residuary clause of a Florida decedent's will then under probate in a Florida court (Florida Statutes, Chap. 87, Appendix, *et. t.*). Appellant Hanson, also a Florida citizen, was domiciliary executrix.

In her Florida estate inventory, appellant Hanson had listed some $1,390,000 worth of assets of the decedent in her hands, including the trust assets (R. 74-90). Appellees claim that all of this passed under the residuary clause of the decedent's will (R. 13-14) as follows:

a. One-half to the defendant, Delaware Trust Co. as trustee for the benefit of the appellee Denckla, and

b. One-half to appellant, Hanson, as trustee for the benefit of the ward of the appellee Middleton.

Appellant Hanson claims that $400,000. of those assets were appointed to trustees of two other *inter vivos* trusts for the benefit of said appellant's children, and that after certain other minor appointments, it was only the balance which was appointed to appellant Hanson as executrix of the will of Mrs. Donner, the trustor. This so-called first power of appointment, which is actually a purported exercise of a power (R. 31-34), was dated December 3, 1949, the same date as decedent's will, but did not become effective according to the original trust indenture (R. 18) until December 21, 1949, the date of its delivery to the Wilmington Trust Company (R. 35). It is this $400,000. which the appellant Hanson, under her hat as executrix, sought in Delaware to have the Court declare validly appointed to said other trusts for the benefit of her children, while at the same time she also was undertaking to pay the estate tax on that $400,000. out of Florida estate assets in her hands as such executrix (R. 13).

All persons who might be interested in determining the question of what passed under the residuary clause of the will were made defendants to the action including:

The appellant, individually and as executrix of her mother's estate;

Delaware Trust Company, as Trustee, one of the two residuary legatees, being also the trustee named in the exercise of the power of appointment;

The beneficiaries named in the residuary trust;

The beneficiaries named in the trusts referred to in the exercise of the power of appointment;

The individuals who were to get the $17,000 referred to in the same exercise;[1]

1. $1,000 each was given to any unnamed servant who might have been in decedent's employment for more than two years at her death. Appellants say there were three who qualified and complains because they were not made parties to the Florida action. Those servants are not necessary parties and did not seek to intervene.

The trustee, Wilmington Trust Company, named in the original *inter vivos* revocable trust set up by the decedent in her lifetime, out of which arose the reserved power of appointment above mentioned. (It is also beneficiary under the will, of the direction to the Executrix to pay the estate taxes on the trust assets).

Personal service of process was had upon all defendants except Delaware Trust Company and Wilmington Trust Company and certain of the individuals concerned with a small part of the $17,000 above mentioned. As to all of those defendants, constructive service as permitted by the Florida law was had, including mailing to them by the clerk of a copy of the summons and a copy of the complaint. None of those served constructively appeared but those who were served personally did so and participated in the action.[2]

The complaint set forth that Dora Browning Donner, the decedent, in her lifetime, while a resident of Pennsylvania, had set up an *inter vivos* revocable trust with Wilmington Trust Company, a Delaware banking corporation, as Trustee, in which a large amount of control had been retained by the trustor (R. 17). Sometime in 1944, Mrs. Donner had moved her home and domicile to Florida. On December 3, 1949, while so domiciled in Florida, Mrs. Donner did two things:

a. She executed her last will and testament, being the will of which appellant now acts as executrix. In this will (R. 12) Mrs. Donner, after making a few personal bequests of small articles, creates the residuary trusts above outlined, and, in describing of what the residue is to consist, includes in it "any and all property, rights and interest over which

2. Although Delaware Trust Company did not appear in the action, one of its directors and a member of its trust committee, Mr. William Foulk, has appeared throughout as counsel for appellant Hanson. (R. 45)

I may have power of appointment which prior to my death has not been effectively exercised by me or has been exercised by me in favor of my executrix." She specifically refers to the *inter vivos* trust (R. 13) and gives directions with respect to estate taxes on those assets.

b. On the very same day, she exercised a power (R. 31) as reserved in said *inter vivos* trust, directing Wilmington Trust Company to make the distribution outlined above in the beginning of this Statement at the expiration of six months but not later than twelve months after her death. While dated December 3, 1949, the power was not effective until December 21, when it was accepted by the trustee.

There was an even later amendment by Mrs. Donner to the exercise of this last mentioned exercise of the power (R. 35). Neither power was executed with the formality of a will. Under the law of both Delaware and Florida a will must have two witnesses. The will of Mrs. Donner and these two exercises of the power of appointment, all executed while she was domiciled in Florida and all exhibiting a unified testamentary pattern, constituted, according to the Florida Supreme Court, a "republication of the original trust instrument, or as if the trust instrument had been executed while the settlor was domiciled in Florida". (R. 187) The 1935 trust was in a sense, ambulatory, subject by its terms to *inter vivos* and testamentary modification and revocation; thus the amendments made while the settlor was domiciled in Florida were, in fact, an attempt at a new disposition by her apart from the original indenture. Florida law can determine what disposition may be made by a domiciliary of property over which she has control effective upon her death. It is the law of Florida (*Forsythe* v. *Spielberger*, 1956, 86 So. 2d 427) that where a will incorporates by reference a previous *inter vivos* trust, which trust is amendable, amendments to the trust effective sub-

sequent to such will must be executed with the formality of a will.

At all times while Mrs. Donner had been a resident of Florida, all of the assets in question, although physically in Delaware, had been returned for intangible taxation in Florida by Mrs. Donner and she had paid the tax thereon (R. 5, 49).

As we will show hereinafter, the reasons we call the trust instrument and the accompanying exercise of powers in reality an agency agreement, are: the trustor's dominance of the trustee by making it subject to the directions of her appointed adviser, and her retention of all incidents of ownership, and her control through powers of revocation, modification, *inter vivos* and testamentary appointments, and the like, and her abortive attempts at testamentary disposition through those *inter vivos* documents.

Appellants, in their Statement of the Case, omit reference to the fact that Hanson, after her motion to dismiss the Florida action was denied by the Circuit and Supreme Court, and after she had then gone to Delaware seeking a different decision in the courts of that state, was enjoined by the Florida courts from proceeding further in Delaware. Her children then, although residents of Florida and parties to the Florida action, through guardians ad litem in Delaware, pressed the suit there. The Florida suit, however, had already been decided in appellees' favor for some time before a decision was handed down in the Delaware action.

POINT I

This Court has no jurisdiction of the appeal.

1. The Appeal Does Not Present Any Substantial Federal Questions.

Questions iv, v and vi, raised by appellants on pages 6-7 of their Brief, are clearly matters of state law, with no federal constitutional significance.

Questions i, ii and iii, stated on page 6 of appellants' Brief, on the surface point up federal constitutional matters. However, cursory examination shows they, too, are without any actual substance.

In essence, as to questions i and ii, Hanson, who is a Florida citizen, the Florida executrix of the Florida will of a Florida decedent, serving by appointment of a Florida court, complains because of alleged federal constitutional infirmities in the service of process upon other co-defendants —the Delaware trust companies—without in any fashion charging any federal constitutional infirmity in the personal service upon her. She is the same person who, dissatisfied with the findings of the Florida court as to what passes under the will of which she is the executrix, sought to thwart that ruling in Delaware only to be enjoined by the Florida court from proceeding further in Delaware. She then caused her children, also Florida residents and parties in the Florida proceedings to progress the Delaware litigation, solely in an effort to defeat the Florida court's proper determination of questions about the very will and estate under which she acts as an officer in the Florida courts.

The Delaware action obviously was not brought in good faith in the light of the facts herein, where fiduciaries combine their activities to impair and defeat the rights of interested persons such as these appellees. The appellant Hanson flagrantly breached her paramount duty to uphold the will and the decrees of the court which appointed her as well as to garner all possible assets for the legatees whom she represents.

It is elemental that the Supreme Court of the United States will not assume jurisdiction of a case where the party invoking that jurisdiction, does so in the interests of a third party. Here appellants, although not attacking the jurisdiction of the Florida courts as to them, say those courts could not validly, under federal constitutional principles, obtain jurisdiction over two of their co-defendants

by constructive service, therefore, they assert a right to come to this court and complain on behalf of others even though their co-defendants are silent and have not appealed.

Their position is untenable. *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-op Marketing Ass'n.*, 1928, 276 U. S. 71; *Smith* v. *Indiana, Ind.*, 1903, 191 U. S. 138. If the co-defendants—the two Delaware trust companies—conceive their federal constitutional rights are jeopardized, they have a remedy, but the appellants cannot back into this court of limited jurisdiction riding on the alleged rights of others.

Appellants' argument about full faith and credit is equally devoid of merit. Succinctly stated, appellants, with considerable "tongue-in-cheek" candor, argue that the Florida courts, including its court of last resort, having ruled on a matter determining what intangible personal property passes under the will of a Florida decedent, under probate in a Florida court wherein appellant Hanson, a Florida citizen, is the executrix appointed by a Florida court, must recede from such ruling because a *nisi prius* court in Delaware subsequently reaches a contrary conclusion in an action commenced by Hanson long after the Florida trial courts had assumed jurisdiction to determine what passed under the will of her mother. In other words, for example, appellants say, in effect, the Delaware court's view as to what estate assets are subject to the burden of $400,000 in inheritance taxes, is binding on Hanson as the Florida executrix and is binding on the Florida courts where such will is under domiciliary probate. Surely, this is not good law. Appellants' question iii is frivolous and altogether without substance.[3]

3. Despite their present insistence that the Florida courts have no jurisdiction to say whether or not the assets in question pass under the will, Hanson, *before appellees' suit was filed in the trial court*, had listed them as assets of the Florida estate and she and her attorneys had petitioned the Florida probate court for fees based upon their inclusion in the assets of the Florida estate and had obtained an order allowing such fees. (R. 69, 74).

The cases appellants cite are entirely inapplicable here because they do not concern proceedings to determine what passes under a will, as did the case before the lower court here, but are rather direct attacks on validity of trusts or exercises of powers of appointment, having a fixed, rather than a roving situs as herein. Also, they deal primarily with problems of *in personam* rather than declaratory relief.

2. The Federal Questions Sought to Be Reviewed Were Not Timely or Properly Raised or Expressly Passed On.

While it is true the appellant, in her petition for rehearing filed in the Supreme Court of Florida, raised substantially the same matters as presented in her questions i, ii and iii, pages 7 and 8 of her Jurisdictional Statement herein, such questions were not passed upon by the Supreme Court of Florida since the petition for rehearing was denied without comment (R. 204, 233). **In addition, the law is well settled that raising such federal constitutional grounds for the first time in a petition for rehearing in the state court of last resort comes too late.** *Spies* v. *Illinois*, Ill. 1887, 123 U. S. 131; also, *Bolln* v. *Nebraska*, Neb. 1900, 176 U. S. 83; *Herndon* v. *Georgia*, Ga. 1935, 295 U. S. 441; reh. den. 296 U. S. 661.

3. The Judgment From Which the Appeal Is Taken Does Not Rest On an Adequate Federal Basis.

The controversy below is a routine inquiry into what passed under the Florida will of a Florida decedent wherein another Florida citizen, appellant herein, was the executrix duly appointed by a Florida court. Such actions, usually in the form of declaratory decree proceedings, as here, are common in all states, and are useful vehicles for the orderly administration of estates. The judgment below resulted in nothing more than a judicial declaration of what property passed under the will of the decedent. There was no money judgment against any party. It left open,

to be later followed up if desired by any party, any necessary proceedings to implement the decision. Conceivably such later proceedings might mean additional litigation in Florida, or elsewhere, to give effect to the declaration of rights, but they are not now before this court or the courts below. It is not the function or intent of the Supreme Court of the United States to take part in disputes as to the correct application of Florida law by Florida courts. *U. S.* v. *Hastings*, 1935, 296 U. S. 188; *Nickel* v. *Cole*, Nev., 1921, 256 U. S. 222; *Minneapolis, etc., R. Co.* v. *Washburn Lignite Coal Co.*, 1920, 254 U. S. 370.

POINT II

The Florida courts below had complete jurisdiction of the subject matter and of all necessary parties.

Surely we must accept as a basic proposition, that each State of the Union has exclusive power to determine what property is to pass under the wills of its own domiciliaries. *Demorest* v. *City Bank Farmers T. Co.*, 321 U. S. 36, 48.

The law of Florida properly was applied below, rather than the law of Delaware. Its domiciliary's attempts to effect the disposition of the greater part of her estate through contractual manipulation, and her other acts, gave Florida a substantial basis upon which to apply its own Law. *Rubin* v. *Irving Trust Co.*, 305 N. Y. 288.

The law of Florida, Chapter 87, F. S., (Appendix, Post) specifically allows actions for declaratory decrees in a case such as this. If such a means were not permitted by the law of Florida, real and substantial questions affecting the administration of this Florida estate could never be solved, *viz:*

a. Do the assets in question have to bear a portion of the Florida and of the federal estate tax burden?

If so, in what proportion and how is it to be allocated? Is the estimated tax of $400,000 to be a burden solely on appellees' share of the estate, or is it to be allocated proportionately upon both appellees' and the trust beneficiaries' portion?

b. Are the assets in question such a part of the estate that they can be looked to by Florida creditors of the estate for satisfaction of their claims?

c. In awarding administrative fees and allowances in Florida, are such assets to be considered as a part of the estate, or should such allowances be computed solely on the balance of the estate?

Let us not forget that the executrix, Hanson, herself listed these trust-agency assets as part of the Florida estate and procured Florida awards of fees based thereon (R. 69-70). Furthermore, as such executrix she seeks the payment of all estate taxes upon the trust assets out of the Florida estate, pursuant to that direction under the Will (R. 13). The appellant, Hanson, herself inventoried the trust agency assets as part of the Florida general estate. She did no more after death than did the testatrix during her lifetime who paid Florida intangible personal property taxes upon the trust assets, thus recognizing that she and not the Delaware trustee, was the true owner of those assets. (R. 5, 49)

Appellants were given reasonable notice and opportunity to be heard on these trust matters "which had a substantial connection" with the State of Florida. *McGee v. International Life Ins. Co.*—U.S.—, dec'd 12/16/57; No. 50, Oct. Term, 1957.

Appellant argues that the conclusions of the Supreme Court of Delaware overruled those of Florida in these practical administration problems of a Florida estate of a Florida decedent under probate in a Florida court, of which appellant Hanson, also a Florida citizen, is the

personal representative. It would indeed be a novel result if the Delaware courts could validly, for instance, tell the Florida courts what were the estate tax implications or the extent thereof of an estate of a Florida decedent under probate in a Florida court.

At this juncture of the Florida litigation, there is no attempt to enforce the Florida decision outside the State of Florida, although we believe this Court ought to find it enforceable in Delaware. The decision stands, at this point, as a declaration of rights under the law of Florida, the correctness of which, we respectfully submit, is not for the Supreme Court of the United States to debate. To the extent the Florida decision determines the status of appellant (a citizen of Florida and a fiduciary of one of its courts) towards the two Delaware trust companies, it is binding within the State of Florida, regardless of the type or manner of service of process on the non-resident trust companies. Even the "Strict Doctrine" of *Pennoyer* v. *Neff*, 95 U. S. 714, is qualified by the following quotation from Justice Field's famous opinion therein:

> "To prevent any misapplication of the views expressed in this opinion, it is proper to observe that we do not mean to assert, by anything we have said, that a state may not authorize proceedings to determine the status of one of its citizens toward a non-resident, which would be binding within the state, though made without service of process or personal notice to the non-resident. The jurisdiction which every state possesses, to determine the civil status and capacities of all of its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory."

Appellants were given "Fair Play and Substantial Justice". It would be destructive of the sovereignty of the State of Florida to hold that it may not regulate the wills, deeds and estates of its domiciliaries.

Appellants argue that the Florida courts, having decided what passes under the will of a Florida decedent must now reverse themselves under the doctrine of full faith and credit simply because a later decision in Delaware, reaches a contrary result. Appellants' argument on this score is absurd when we consider the fact that all necessary parties in interest were before the Florida court, including herself as the personal representative of the settlor-testatrix, the residuary legatees, and those who would take as beneficiaries under the residuary legatees, as well as those who would take if the powers of appointment were properly exercised. Her argument that the two Delaware trust companies were not properly before the Florida court implies, since each was a legatee or subject to the operation of directions in the decedent's will, that the Florida court cannot, except by personal service of process within the state make a binding determination as between legatees of the will of a Florida domiciliary, under probate in a Florida court, of what personal property passes under such will.[4] If the two Delaware trust companies were properly before the Florida courts as legatees, without personal service of process, they were before that court in any other capacity they might bear to the parties. Beyond that, and even if this were not true, they were before the Florida court under the doctrine of virtual representation since in privity with those personally appearing in that proceeding.

4. We contend, under the principle of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313, the right of the Florida courts to determine what personal property passes under the will of a Florida decedent is "so insistent and rooted in custom as to establish beyond doubt the rights of the courts to determine the interests of all claimants, resident or non-resident, provided the procedure accords full opportunity to appear and be heard"; we contend further, that here, since copies of the summons and of the complaint were in fact mailed to the non-resident banks, "traditional notions of fair play and substantial justice" are served and the due process clause is observed. *International Shoe Co.* v. *Washington*, 326 U. S. 310.

POINT III

The decree of the Florida Supreme Court is correct in all respects and should be given full faith and credit.

The opinion herein of the Supreme Court of Florida presents a sound and compelling disquisition on the subject (R. 182-192).

Thus, the full faith and credit clause of the federal Constitution should be applied in this case to protect the decrees and decisions of the Florida courts in determining what passes under the will of said deceased. The chancery case in Delaware was filed approximately six months after the chancery case had been filed in Florida, and the decision of the Supreme Court of Florida was rendered several weeks before the decision of the Supreme Court of Delaware.

As hereinbefore shown in this brief, the Delaware action could not possibly have been brought in good faith, but was an unconscionable attempt on the part of the appellants to oust the Florida courts of the power to administer the estate of a Florida citizen and determine what passed under her will.

In the instant case neither the so called trust-agency instrument nor the power of appointment provides for the vesting of a *present interest* in anyone except to retain dominant proprietary rights in Dora Browning Donner, the donor of the so called trust. Therefore, the entire proprietary or reversionary interest in the trust property remains in her estate to be administered under the terms of her will.

The trustor, Mrs. Donner, reserved such control over the trustee and the trust as to make the trustee her mere agent. 1 Bogert, Trusts and Trustees, Sec. 104, p. 490.

Under the laws of Florida an instrument that does not pass an interest until the death of the maker is testamentary, and for it to be valid as a will it must be attested by at least two witnesses, and it must be probated. The trust herein even is testamentary according to the Laws of Pennsylvania where the trustor then was domiciled when it was made. *Pengelly's Estate,* 97A 2d 844, 374 Pa. 358.

"A deed, in order to be effective as such, must pass a *present interest* to the grantee, although grantee's right to enter into possession may be deferred to a future time, and if deed manifests an intention that it shall be operative only upon the grantor's death, it can never take effect at all unless executed with such formality that it may be given effect as a testamentary disposition."

Williams v. *Williams,* 149 Fla. 454, 6 So. 2d 275 (3);
Leonard v. *Campbell,* 138 Fla. 405, 189 So. 839 (4).

This rule is stated by the Supreme Court of Mississippi as follows:

"When instrument in form of deed specifically provides that it shall not take effect until the death of grantor, it is testamentary in character and void as a deed."

"Even though instrument may be in form of a deed, *if no present interest* is thereby conveyed and it states or clearly shows that it does not take effect so as to pass an interest until grantor's death, it is testamentary in character and invalid as a deed."

Rodgers v. *Rodgers* (Miss.), 67 So. 2d 698 (2, 4).

To the same effect see the cases of

Harber v. *Harber,* 152 Ga. 78, 108 S. E. 520;
Argile v. *Fulton,* 295 Ill. 569, 129 N. E. 526.

In *Page on Wills,* Lifetime Edition, volume 1, section 61, it is stated that whether an instrument passes an interest during testator's lifetime or only on his death depends on his intention. In this case Mrs. Donner's intention was clearly expressed in the power of appointment, and she specifically provided that no interest is to pass *until her death.*

In section 74 of *Page on Wills, supra,* it is stated that an instrument which passes a *present interest* is a deed and not a will, and in section 75 it is stated that whenever an instrument shows on its face that the maker does not intend that any interest shall pass thereby *until his death, it is a will.*

It was the clear intent of the donor, as found in the trust agency agreement of March 25, 1935, and her attempted appointments thereunder, and her Last Will and Testament of December 3, 1949, that the so-called trust instrument should be ambulatory as to the devolution of the property thereunder and governed by the laws of her domicile, at least at the time of her death. This is apart from the donor's dominance of the trustee by making it subject to an adviser appointed by her and other controls (R. 20-21).

There is a remarkable similarity between paragraph "Seventh" of the will, making the executrix and trustee thereunder subject to the domination of another as "adviser" (R. 15) and paragraph "4" of the trust instrument to the same effect (R. 20). A web of *inter vivos* and *post mortem* controls thus was confirmed.

The devolutionary provision appearing at par. "1" of the trust instrument reads, in part, that upon the donor's death, the principal shall be paid as appointed by her "last instrument in writing", or failing that, by her "last will and testament" (R. 18). This is not the language of a present deed of interest. It is the language

of one who withholds to the end, as in a will, what shall be done with her property.

Both the trust instrument and the will interchangeably incorporate each other by reference.

Par. "FIFTH" of the Will, which contains the residuary dispositions, includes, in its introductory portion, all property over which the testatrix might have a power of appointment not effectively exercised by her prior to death, and directs the testamentary payment of all estate taxes on the specific trust property in question (R. 13).

Thus, the donor-testatrix focused all her dispositions in her will and made Florida her domiciliary State, the final arbiter of what was effectively otherwise disposed of or passed under her will. This was so that not only might the estate taxes be paid by her Executrix in either event, but also so that full devolution of all her property might take place according to her written directions. We therefore find in the will the express language which passes into the hands of the Florida court the power to determine what passes under the will, and in the agency trust agreement the reservation in her of the power to dispose by her will or other last written instrument of the property subject to that agreement.

It is very important to observe that the "last instrument in writing" executed by the donor and required by the express terms of the agency trust agreement for an effective appointment of the subject property, is the so-called second power of appointment, an instrument dated July 7, 1950 (R. 35-36). This last instrument in writing of July 7, 1950, contains no exercise of any power of appointment but merely cancels in part a previous purported appointment.

It is fundamental that instruments attempting to exercise a power must strictly conform to the grant of power.

3 Bogert, "The Law of Trusts and Trustees", Part 1, Sec. 532, Note 41, page 333. Therefore, *there having been no appointment of the inter vivos property by the last instrument in writing, the alternative provisions of the agency trust agreement come into effect and the property devolves under the testatrix's Last Will and Testament.*

Full Faith and Credit

It would seem that this topic has been exhausted elsewhere. The requirements of substantial justice are that a matter once having been litigated between parties ought to be laid to rest forever. The full faith and credit clause of the federal Constitution ". . . brings to our Union a useful means for ending litigation." *Riley* v. *New York Trust* Co., 315 U. S. 343.

Appellants had their day in court or an opportunity for a full day in court in Florida, with all reasonable safeguards provided as to their rights and interests. It was most unfair and unjust that they should have been permitted the employment of the judicial implements of Delaware in order to attempt to set at naught that which Florida already had decreed as to them.

This court should sustain the dignity of the decree of the Florida Supreme Court appealed from.

CONCLUSION

The appeal should be dismissed, or, in the alternative, the judgment of the Supreme Court of Florida, dated September 19, 1956, should be affirmed.

Respectfully submitted,

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APPENDIX

Florida Statutes, Chap. 87:

"87.01 *Scope; jurisdiction of circuit court.*—The circuit courts of the state are hereby invested with authority and original jurisdiction and shall have the power upon a filed complaint, to declare rights, status and other equitable or legal relations whether or not further relief is or could be claimed or prayed. No action or procedure shall be open to objection on the ground that a declaratory decree, judgment or order is prayed for. The circuit court's declaration may be either affirmative or negative in form and effect and such circuit court declaration shall have the force and effect of a final decree, judgment or order. The circuit courts may render declaratory decrees, judgments or orders as to the existence, or non-existence:

(1) Of any immunity, power, privilege or right; or

(2) Of any fact upon which the existence or non-existence of such immunity, power, privilege or right does or may depend, whether such immunity, power, privilege or right now exists or will arise in the future. Any person seeking a declaratory decree, judgment or order may, in addition to praying for a circuit court declaration, also pray for additional, alternative, coercive, subsequent or supplemental relief in the same action.

"87.02 *Power to construe, etc.*—Any person claiming to be interested or who may be in doubt as to his rights under a deed, will, contract or other article, memorandum or instrument in writing or whose rights, status or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum or instrument in writing may

have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum or instrument in writing, or any part thereof, and obtain a declaration of rights, status or other equitable or legal relations thereunder.

"87.04 *Suits by executors, administrators, trustees, etc.*—Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or equitable or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

(2) To direct the executor, administrator, or trustee to abstain from doing any particular act in his fiduciary capacity; or

(3) To determine any question arising, in the administration of the estate or trust, including questions of construction of wills and other writings.

"87.05 *Enumeration not exclusive.*—The enumeration in §§ 87.02, 87.03 and 87.04 does not limit or restrict the exercise of the general powers conferred in §87.01, in any proceeding where declaratory relief is sought; also, any declaratory decree, judgment or order given or made in pursuance of this chapter may be given or made by way of anticipation with respect to any act not yet done or any event which has not yet happened, and in such case the said decree, judgment or order shall have the same binding effect with respect to that future act or event, and the rights or liability to arise therefrom, as if that act or event had already been done or had already

happened before the said decree, judgment or order was given or made.

"87.07 *Supplemental relief.*—Further relief based on a declaratory decree, judgment or order may be granted whenever necessary or proper. The application therefor shall be by petition to the circuit court having jurisdiction to grant the relief. If the application be deemed sufficient, the circuit court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory decree, judgment or order, to show cause why further relief should not be granted forthwith.

"87.10 *Parties.*—When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state or the state attorney of the judicial circuit in which the action is pending shall also be served with a copy of the proceedings and be entitled to be heard.

"87.12 *Adequate remedy does not preclude.*—The existence of another adequate remedy shall not preclude a decree, judgment or order for declaratory relief. The circuit court may order a speedy hearing of an action for a declaratory decree, judgment or order and may advance it on the calendar. When a suit for declaratory decree is filed as provided in this chapter the court shall have power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as a suit in equity."